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### Responsibility of The Captain in Transporting Goods at Sea

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#### ABSTRACT

*In the provisions of Article 137 Paragraph (1) and (2) Law no. 17/2008 both the Gross Tonnage 35 and motorboats are less than Gross Tonnage 35 as well as for boats traditionally less than the Gross Tonnage 105, I insist on the point states: The captain is the leader on the ship who owns law enforcement authority and are responsible for safety, security and order of ships, and cargo goods obligation. In another provision, it is also stated that the master is the leader of the ship, who every certain event must take a stand and act following skill, precision, and wisdom, as required to carry out their duties (Article 342 paragraph (1) KUHD). As the leader of the ship, the master must be responsible for all his actions against the ship and its cargo in all events that happen in the sea. From that the legislators gave a burden responsibility to the master as regulated in Article 342 paragraph (2) KUHD, that is, if the action is committed in that position is intentional or negligent, which causes damage to other people. The breadth of obligations given by law, in the implementation of transportation in terms of the responsibility of the Ship Leader/Master to safety, security, and order of ships and sailors, in essence, boils down to the interests of the cargo as the agreed object which is the obligation of the carrier. The obligation that arises from its existence an agreement as intended gives birth to responsibilities implicitly it is the responsibility of the transportation company. The formulation of these provisions includes the extent of the obligations given by the Constitution. If you listen to the process of organizing deep transportation regarding the responsibility of the Ship Leader/Master for safety, security, and order of ships and sailors boils down to in the interest of cargo as the agreed object is the obligation of the carrier.*

**Keyword:** Sea transport; responsibility; sea regulations.

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#### ABSTRAK

Dalam ketentuan Pasal 137 Ayat (1) dan (2) UU No. 17/2008 baik Gross Tonnage 35 dan kapal motor kurang dari Gross Tonnage 35 serta untuk kapal tradisional kurang dari Gross Tonnage 105, dapat dinyatakan bahwa kapten adalah pemimpin di kapal yang memiliki otoritas penegakan hukum dan bertanggung jawab atas keselamatan, keamanan dan ketertiban kapal, serta kewajiban muatan barang. Dalam ketentuan lain juga disebutkan bahwa nakhoda adalah pemimpin kapal, yang dalam setiap peristiwa tertentu harus mengambil sikap dan bertindak sesuai dengan kecakapan, kecermatan, dan kebijaksanaan, sebagaimana diperlukan untuk melaksanakan tugasnya (Pasal 342 ayat (1)). KUHD). Sebagai pemimpin kapal, nakhoda harus bertanggung jawab atas segala tindakannya terhadap kapal dan muatannya dalam segala peristiwa yang terjadi di laut. Dari situ pembentuk undang-undang memberikan beban tanggung jawab kepada tuannya sebagaimana diatur dalam Pasal 342 ayat (2) KUHD, yaitu apabila perbuatan itu dilakukan dalam kedudukan itu dengan sengaja atau lalai, yang mengakibatkan kerugian bagi orang lain. Luasnya kewajiban yang diberikan undang-undang, dalam pelaksanaan pengangkutan dalam hal tanggung jawab Nakhoda/Nakhoda terhadap keselamatan, keamanan, dan ketertiban kapal dan awak kapal, pada hakikatnya bermuara pada kepentingan muatan sebagaimana yang diperjanjikan. barang yang menjadi kewajiban pengangkut. Kewajiban yang timbul dari adanya suatu perjanjian sebagaimana dimaksud melahirkan tanggung jawab yang secara implisit menjadi tanggung jawab perusahaan angkutan. Rumusan ketentuan tersebut meliputi luasnya

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kewajiban yang diberikan oleh konstitusi. Merujuk pada proses penyelenggaraan angkutan dalam mengenai tanggung jawab Nakhoda/Nakhoda atas keselamatan, keamanan, dan ketertiban kapal dan awak kapal bermuara pada kepentingan muatan karena barang yang diperjanjikan adalah kewajiban pengangkutan.

**Kata kunci:** Transportasi laut; tanggung jawab; peraturan laut.

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## INTRODUCTION

The process of transporting good people nor goods in the sea in provisions Law Number 17 of 2008. Regarding Shipping (hereinafter referred to as UU No.17 / 2008) which has revoked Law no. 21 1992 from the aspect of shipping in the context of the transportation process and or transfer of people and goods from and to the point of interest consists of more than one subject executor as in the introduction in Article 1 numbers 40, 41, and 42, which are separately concrete is stated as follows: number 40, The crew is a working person or employed on board by the owner or ship operators to perform duties on the ship according to his position listed in the civil book; number 41, The captain of the ship is one of the crew the ship which is the highest leader in ships and has the authority and responsibility following the provisions laws, and regulations; Art 42, The crew is the crew other than the captain.

The process of transporting good people nor goods in the sea [6], [7] in provisions Law Number 17 of 2008 Regarding Shipping (hereinafter referred to as UUmNo.17/2008) which has revoked Law no. 21 1992 from the aspect of shipping min the context of the transportation process and or transfer of people and goods from and to the point of interest consists of more than one subject executor as in the introduced in Article 1 numbers 40, 41, and 42, which are separately concrete is stated as follows: number 40, The crew is a working person or employed on board by the owner or ship operators to perform duties on the ship according to his position listed in the civil book; number 41, The captain of the ship is one of the crew the ship which is the highest leader in ships and has the authority and responsibility by the provisions laws and regulations; Art 42, The crew is the crew other than the captain. In terms of the legal position in the operation of transportation in the said sea.

The captain is usually in the context of the crew ship employed by a shipping company, as has been touched on in the background above. In the provisions of Article 137 Paragraphs (1) and (2) UU no. 17/2008 good size motorboat Gross Tonnage 35 and motorboats less size than Gross Tonnage 35 as well for traditional vessels less than Gross Tonnage 105. In other provisions also mentioned that the captain is the leader of the ship, every time there is an event certain must take a stand and act by skill, accuracy, and wisdom, as necessary to perform their duties (Article 342 paragraph (1) KUHD). As the leader of the ship, the captain has to take responsibility for everything actions against the ship and its cargo in all events that occur at sea [5].

## METHOD

### Overview of Transportation by Sea

Transportation is a transportation activity in moving goods and passengers from one place to another or it can be said as an expeditionary activity. Article 1 of Law Number 17 of 2008 concerning Shipping (hereinafter referred to as the Shipping Law) stipulates sea transportation which is used by the term transportation in waters is the activity of transporting and/or transfer passengers and/or goods by using the ship. In addition to the meaning of transportation in waters, there are also terms important in sea transportation, namely:

1. Sea Transportation is a transportation activity according to its activities serving sea transportation activities.
2. River and Lake Transportation is a transportation activity that includes reservoirs, swamps, waterways, canals.
3. Ferry Transportation is transportation that functions as movable bridges that connect road networks and/or networks a train that was cut off because of the waters. As a service activity in moving goods or anything passengers from one place to another, transportation plays a very important role in realizing the creation of a dynamic national distribution pattern.

Types of sea transportation based on article 7 of Law No. 17 of 2008 concerning Shipping, consisting of Domestic Sea Transportation, Sea Transportation Foreign Affairs, Special Sea Transportation, and People's Shipping Sea Transportation.

### **Domestic Sea Transportation**

Domestic Sea Transportation is a sea transportation activity carried out in water areas in Indonesia that is organized by the national sea transport company or in the sense that it is carried out using the boundaries of sovereignty within the state. Domestic shipping includes:

- a. Pelayaran Nusantara, namely shipping to do business transportation between Indonesian ports regardless of the direction taken by one another by the applicable regulations. Its shipping radius is > 200 nautical miles.
- b. Local Shipping, namely shipping to conduct business transportation between Indonesian ports destined for support domestic shipping and overseas shipping activities by using ships measuring 500 m<sup>3</sup> contents 23 gross downward or equal to 175 BRT down. Radius voyage <200 nautical miles or equal to 200 nautical miles.
- c. Pelayaran Rakyat, namely Nusantara shipping using sailboats.

### **Overseas Sea Transportation**

Overseas Sea Transportation is a sea transportation activity from a special port or terminal which is open for foreign trade to foreign ports or from foreign ports to Indonesian ports or special terminals which is open to foreign trade organized by a sea transportation company or in the sense that it is carried out by transportation in the free ocean that connects one country to another. Overseas shipping, which includes:

- a. Near Ocean Voyages, namely voyages to ports neighboring countries that do not exceed 3,000 nautical miles from the port outside Indonesia, regardless of direction;
- b. Ocean voyages, namely voyages to and from abroad not a near ocean voyage.

### **Special Sea Transportation**

Special Sea Transportation is a transportation activity to serve its business interests in supporting its main business.

### **Shipping Sea-People**

Shipping Sea-People is a traditional and owned people's business separate characteristics to carry out transportation in waters with using a sailing boat, motorized sailing vessel, and/or motorboat simple Indonesian flag with a certain size.

## **RESULT AND DISCUSSION**

### **Responsibilities of Captains for Deeds - Actions Done Ship Crew During the Transport Process to Entrepreneurs Ship.**

Formulation of Article 1 Paragraph (41) of Law no. 17 of 2008 stated that the captain is one of the crew members, then the understanding of the crew the ship confirmed in Article 1 Paragraph (40) is a person employed at on the ship by the owner or ship operator to perform the above tasks ships according to their positions listed in the certificate book. Provisions the two formulas have an agreement between the master as a crew ship with the owner or ship operator, where the master carries out tasks to operate and/or control a ship. The tasks referred to are related to transport activities and/or move passengers and/or goods by using the ship. So it can be said that there is a relationship "mutualist symbiosis" between the skipper and the shipowner/ship operator. This transport process according to the provisions of Article 38 Paragraph (1) of Law No.17 of 2008 is an obligation water transportation company to carry passengers and/or goods especially postal

transportation agreed upon in the transport agreement. Paragraph (2) stated that the transportation agreement as intended in Paragraph (1) is proven by passenger tickets and cargo documents. In the provisions of Law no. 17 of 2008 does not exist clear understanding of who is meant by the company transport. With reference to the provisions of Article 1 Paragraph (40) of Law no. 17 In 2008, it was interpreted that what is meant by company transportation is a company owned by the owner/operator ships either individually or as a legal entity. Obligations that arise from the existence of an agreement as follows referred to above creates responsibilities that implicitly constitute the responsibility of the transportation company. Formulation of these provisions covers the breadth of obligations given by law. the process of organizing the transportation in terms of responsibility

Ship Leader/Master for safety, security, and order ships and sailors primarily boils down to the interests of goods cargo as the agreed object which is an obligation carrier. Further provisions in Article 137 Paragraph (3) of Law no. 17 years 2008 concerning the Master's Voyage are not responsible for the validity of the material correctness of the cargo documents. This provision ostensibly there is an interpretation that with regard to the physical cargo of the ship listed in the shipping document are considered to be the same in quality and the quantity. This is actually a weakness of remembering the provisions governing the responsibility of the carrier are well regulated according to the provisions of Article 38 Paragraph (1) in conjunction with Article 40 Paragraph (1) in conjunction with Article 41 Paragraph (1) letters b and d to the transportation company and Article 137 Paragraph (1) and (2) against the skipper. The nature of a contrario is also seen in Article 137 Paragraph (4) Article 137 Paragraph (3) states that the captain is obliged to refuse and notify the competent authority if they know the cargo which was transported not in accordance with the document of the cargo. 2 Article 40 Law No.17 the Year 2008 said that, "transportation companies in the waters responsible for the safety and security of passengers and/or the charcoal being transported a. " at 2 says that, "company" The transportation is responsible for the cargo of the ship according to type and amount stated in the cargo document and or agreement the contract of carriage that has been agreed upon. " Furthermore, the origin of 41 Law o.17 the Year 2008: at 1 said that, "responsibility, as referred to in Article 40, may arise as a result of operations ships, in the form of:

1. The death or injury of the passenger being transported
  2. Destroyed, lost, or damaged goods transported and
  3. Delay in the transportation of passengers and/or goods being carried, or loss of third parties.
- Ship Leader or Master before carrying out the voyage there is an obligation to ensure that the vessels are fulfilled marine eligibility requirements. In relation to its obligations as part of the carrier.

If it is related to the freight agreement relationship, of course, there are legal consequences, to objects in the form of goods that are loaded in the process of the voyage. In terms of these consequences, it is absolutely necessary to have an instrument in the form of recording or commonly known as the daily administration of ships the shipping process becomes a very important part, to know events that occurred during the voyage.

### **Responsibilities of the master if there is a loss in the process Transportation of Cargo by Sea**

Law No. 17 of 2008 gives a broad understanding concerning shipping, as defined in Article 1 point 1: "is one a unit consisting of transportation in water, at ports, and safety and security, as well as protection of the maritime environment "The operation of shipping is carried out with the aim of facilitating the flow of people and/or goods moving through the water by prioritizing and protecting national shipping, in the framework support, mobilize, and encourage the achievement of goals national development, strengthening the realization of the archipelago as well strengthen national resilience The ships are headed by the skipper in charge fully on the safety and security of the ship, passengers and cargo on the way. It is the duty of the master who is the representative of the Shipping company as a carrier to prepare a ship that will sail in seaworthy conditions. Seaworthiness of a ship, proven with a safety certificate as a supporter of the fairness of the ocean issued by the authorized institution, namely the Indonesian Classification Bureau If there is an accident on the ship or other ship, then the captain based on Article 5 paragraph (1) and paragraph (2) Republic Government Regulation Indonesia No. 1 of 1998 concerning Ship Inspection is required to report ship accident to the nearest port in the event of an accident the ship occurs in Indonesian territorial waters or if the

accident occurred outside the territorial waters of Indonesia, the skipper or the leader of a ship with an Indonesian flag is obliged to report to the closest representation of the Republic of Indonesia and state Government officials the local authorities at the first port to stop after ship accident happened [8].

### **Limitation of Liability of the Captain In the process of transporting goods at Sea.**

The captain is charged with the responsibility as stipulated in Article 342 the second paragraph of the KUHD which states: "He was responsible for that loss caused by it in others because deliberate or grave mistakes ". This provision is in terms of loading the above responsibilities are also limited in Article 373 KUHD itself, as mentioned that by not reducing the provisions of Article 342, second paragraph of the KUHD, The skipper is only bound, if he has a limit of authority or strictly accept a personal obligation. The imposition of responsibilities that are born of the provisions of Article 342 second paragraph, in the event of a loss in context Article 1 of the KUHD on enforcement Civil Code, then the prosecution for losses created based on the provisions of Article 1365 of the Civil Code, states that: " Every act violates the law, that brings harm to another, oblige people because of his fault issue that loss, compensate for the loss such ". Or in common juridical terms is called an act of breaking the law (*onrechmatige daad*). Assignment of this responsibility, if associated with the existence of a crew understanding ships consisting of several subjects law in it, as stated at the beginning there is the Leader of the Ship, the captain, and the crew, where next The skipper is also called the leader Ship, then by relying on the provisions Article 1367 of the Civil Code, also stated that: "One is not alone responsible for that loss due to his own actions, but also for losses caused by deeds his dependents or caused by goods that are under his watch ". This matter hints that the captain/leader of the ship is also responsible for actions and/or actions taken by the crew or more broadly people others who were on the boat either because problems and omissions cause damage, be destroyed, and defect specific good overall and partially, which gives rise to losses on the other.

Relationship Restrictions Responsibilities of the Captain Ship Entrepreneur This relation is born because of its agreement between the Ship Entrepreneur and captain deals with implementation cruise. Based on which agreement then there is a legal relationship between Ship Entrepreneur and captain. Provisions Article 321 of the KUHD stipulates that shipmen are bound by all legal action and responsibility against any losses caused by an act against the law, done by them, that works either permanently or temporarily on the ship, provided that the action was done in their work. Because according to the provisions of Article 399 KUHD that The skipper is the main labor shipman, then everything his actions become responsibility ship entrepreneur, the origin of the activities carried out with respect to his position or in the time they run his job. If the captain does beyond their authority, then according to Article 373 KUHD the captain himself be responsible. Hence, responsibility skipper can be defined as limited to adverse consequences to third parties, that is causally due to deliberate or serious negligence (*opzet of grove schuld*), in running task, but there are exceptions when the authority is exceeded or he expressly accepts an obligation personal for it (Article 342 second paragraph jo Article 373 KUHD). Where gross negligence falls into the category of acts against the law (Article 1365 Civil Code).

### **CONCLUSION**

The captain as the leader on the ship, is fully responsible for the safety of ships, passengers and cargo during the shipping process from the port of loading until the port of destination. Criminal sanctions are required to enforce these responsibilities, and the sanctions have been regulated in Law No. 17 of 2008 concerning Shipping. Relating to the interests of goods the agreed cargo, then deep-sea transportation process activities Ship Diary instrument and all ship notes/documents become absolute existence, with regard to the shipping process and there are events that cannot be confirmed as the power of proof, if there is a loss incurred during the voyage for sake interests of third parties in terms of assigning responsibility can be seen from two angles of the arrangement law namely: Difference of responsibility whether regulated in Article 321 or 342-second paragraph of the KUHD

as referred to above, wherein the provisions Article 321 regulates responsibilities Ship Entrepreneur and the provisions of Article 342 the second paragraph sets out responsibilities Master. From these two provisions, it is clear it can be concluded that KUHD separates the responsibilities based on the second portion of these positions.

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